



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2023-0024]

RIN: 0960-AI83

Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise the time period that we consider when determining whether an individual's past work is relevant for purposes of making disability determinations and decisions. Specifically, we would revise the definition of past relevant work (PRW) by reducing the relevant work period from 15 to 5 years. This change would allow individuals to focus on the most current and relevant information about their past work, better reflect the current evidence base on changes over time in worker skill decay and job responsibilities, reduce processing time and improve customer service, and reduce burden on individuals.

DATES: To ensure that your comments are considered, we must receive them by no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2023–0024 so that we may associate your comment(s) with the correct regulation.

Caution: You should be careful to include in your comments(s) only information

that you wish to make publicly available. We strongly urge you not to include in your comment(s) any personal information, such as Social Security numbers or medical information.

1. *Internet*: We strongly recommend that you submit your comments(s) via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the *Search* function to find docket number SSA–2023–0024. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. *Fax*: Fax comments to 1-833-410-1631.

3. *Mail*: Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Social Security Administration, 6401 Security Boulevard, Mail Stop 3253, Altmeyer Building, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 966–4794, or regulations@ssa.gov. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <https://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

Statutory Definition of Disability

The Social Security Act (Act) defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment (MDI) which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.¹ The Act also states that, for adults,² an individual shall be determined to have a disability only if their physical or mental impairment or impairments are of such severity that they are not only unable to do their previous work but cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which they live, or whether a specific job vacancy exists for them, or whether they will be hired if they apply for work.³ The Act defines *work which exists in the national economy* as work which exists in significant numbers either in the region where such individual lives or in several regions of the country.⁴

These proposed rules would not apply to disability benefits for children applying under title XVI (Supplemental Security Income (SSI)). These proposed rules focus on how we assess individuals' work histories when adjudicating disability claims and have no effect on the required quarters of coverage and payroll tax contributions to be insured for Social Security Disability Insurance (SSDI).

Sequential Evaluation Process

As outlined in our current regulations, we use a five-step sequential evaluation process to determine whether an individual is disabled.⁵ The following is a general overview of the five-step sequential evaluation process.

¹ 42 U.S.C. 423(d)(1)(A) and 1382c(a)(3)(A)-(B).

² The Act defines disability differently for individuals under the age of 18. 42 U.S.C. 1382c(a)(3)(C).

³ 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

⁴ *Id.*

⁵ 20 CFR 404.1520 and 416.920.

At step one of the sequential evaluation process, we consider whether an individual is working, and whether the work qualifies as SGA.⁶ If the individual is performing SGA, we will find that the individual is not disabled, regardless of their medical condition, age, education, and work experience. If the individual is not performing SGA, we go to the second step of the sequential evaluation process.

At step two of the sequential evaluation process, we consider whether an individual has any “severe” impairment(s), which significantly limits their physical or mental ability to do basic work activities,⁷ and whether the impairment(s) meets the statutory duration requirement.⁸ If the individual’s impairment(s) is not severe or if it does not meet the duration requirement, we will find that the individual is not disabled.⁹ If the individual has a severe impairment(s) that meets the duration requirement, we go to the third step of the sequential evaluation process.

At step three of the sequential evaluation process, we consider whether an individual’s impairment(s) meets or medically equals in severity an impairment(s) in the Listing of Impairments.¹⁰ If the individual’s impairment(s) meets or medically equals in severity an impairment in the Listing of Impairments, we will find that the individual is disabled. If the individual does not have an impairment(s) that meets or medically equals in severity a listed impairment, we determine the individual’s residual functional capacity (RFC) before we go to the fourth step of the sequential evaluation process.¹¹ RFC is the

⁶ 20 CFR 404.1520(a)(4)(i) and 416.920(a)(4)(i). We explain substantial gainful activity at 20 CFR 404.1510, 404.1572, 416.910, and 416.972. SGA is work activity that is substantial and gainful. Substantial work involves doing significant physical or mental activities. An individual’s work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. Gainful means work for pay or profit, or in work of a type generally performed for pay or profit.

⁷ See 20 CFR 404.1520(a)(4)(ii) and (c), 416.920(a)(4)(ii) and (c). We explain what we mean by an impairment that is not severe in 20 CFR 404.1521 and 416.921. We use the term *impairment(s)* to mean an *impairment or combination of impairments* in this NPRM.

⁸ 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii). We explain the duration requirement at 20 CFR 404.1509 and 416.909.

⁹ 20 CFR 404.1520(a)(4)(ii) and (c), 416.920(a)(4)(ii) and (c).

¹⁰ 20 CFR 404.1520(a)(4)(iii), 404.1525, 416.920(a)(4)(iii), and 416.925. The Listing of Impairments are found at 20 CFR part 404 subpart P, appendix 1, and they apply to title XVI under 20 CFR 416.925.

¹¹ 20 CFR 404.1520(e) and 416.920(e).

most an individual can do despite limitations caused by the individual's physical and mental impairments.¹² Generally we assess RFC on a regular and continuing basis meaning 8 hours a day for 5 days a week, or an equivalent work schedule.¹³ These proposed rules would not affect how we evaluate steps one, two, and three of the sequential evaluation process.

At step four of the sequential evaluation process, we consider the individual's work history and whether, given their RFC, the individual can perform any of their past relevant work (PRW) either as the individual actually performed it or as the work is generally performed in the national economy.¹⁴ If we find that the individual can perform any of their PRW, we will find that the individual is not disabled. If the individual cannot perform any of their PRW, we go to the fifth step of the sequential evaluation process.¹⁵

At step five of the sequential evaluation process, we refer to an individual's work history again to consider whether an individual's impairment(s) prevents them from adjusting to other work that exists in significant numbers in the national economy, considering their RFC and the vocational factors of age, education, and work experience (which may include conducting a transferable skills analysis).¹⁶ If we find that the individual cannot adjust to other work, we will find that the individual is disabled. If we find that the individual can adjust to other work, we will find that the individual is not disabled.

Once an individual is found disabled and receives benefits, we may periodically conduct a continuing disability review (CDR) to determine whether the individual continues to be disabled.¹⁷ Although the CDR rules use a different sequential evaluation

¹² See 20 CFR 404.1545 and 416.945.

¹³ See SSR 96-8p: Policy Interpretation Ruling Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.

¹⁴ 20 CFR 404.1520(a)(4)(iv) and (f), 404.1560(b)(2), 416.920(a)(4)(iv) and (f), and 416.960(b)(2).

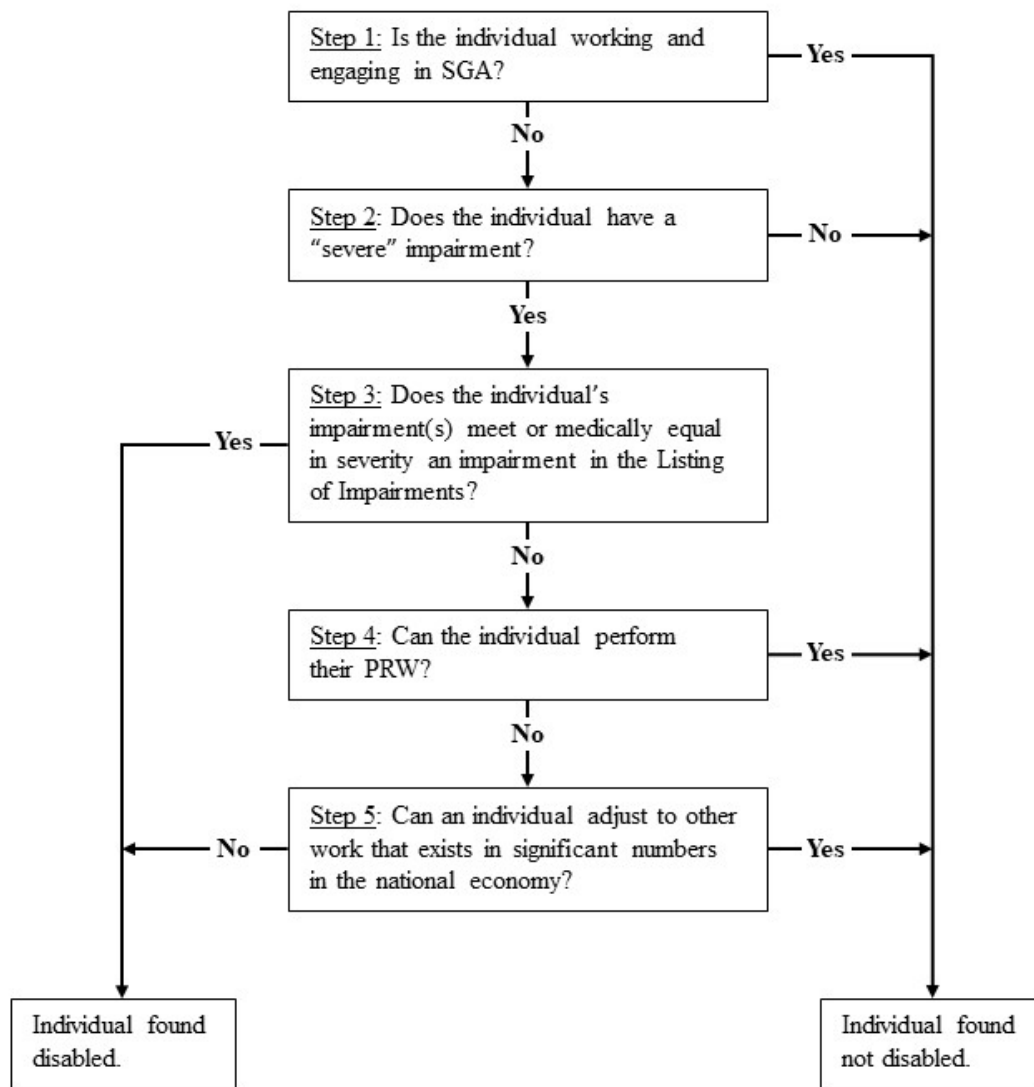
¹⁵ We may use the expedited process described in 20 CFR 404.1520(h) and 416.920(h) to consider step five before step four when applicable.

¹⁶ 20 CFR 404.1520(a)(4)(v), 404.1568, 416.920(a)(4)(v), and 416.968.

¹⁷ 20 CFR 404.1520(a)(5), 404.1594, 416.920(a)(5), and 416.994.

process, the final two steps of the process used for CDRs (steps seven and eight in title II cases and steps six and seven in adult title XVI cases) mirror the final two steps used in the sequential evaluation process for initial claims (steps four and five).¹⁸

Table 1: Overview of the Sequential Evaluation Process for Initial Adult Disability Claims



¹⁸ 20 CFR 404.1594(f)(7)-(8) and 416.994(b)(5)(vi)-(vii). Title II benefits include disability insurance benefits, disabled widow(er) benefits, and child disability benefits. Title XVI benefits include supplemental security income.

Definition of PRW and the Relevant Work Period

Our current rules define PRW as work an individual has done within the past 15 years, that was SGA, and that lasted long enough for the individual to learn how to do it.¹⁹ In initial claims, the relevant work period usually begins 15 years prior to the date of our determination or decision. However, in certain situations in claims under title II of the Act, the relevant work period begins on an earlier date.²⁰ For example, when an individual's insured status for title II disability benefits expired before the adjudication date, we consider the relevant work period to begin 15 years before the date last insured.²¹ As noted below in our discussion of medical-vocational profiles, if we consider all of an individual's work to be arduous and unskilled, and the individual has little education, we may ask the individual to tell us about all of their work from the time the individual first began working.²²

In CDRs, the relevant work period includes work an individual has done within 15 years prior to the date of the CDR determination or decision.²³ Individuals must report employment changes since the initial decision or most recent CDR.

Step Five of the Sequential Evaluation Process Considers Work Experience from PRW

At step five of the sequential evaluation process, we determine whether other work exists in significant numbers in the national economy that an individual can adjust

¹⁹ 20 CFR 404.1560(b)(1) and 416.960(b)(1). See also SSR 82-62: Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, in General, in which we state that the work lasted long enough for the individual to learn the job if they learned the techniques, acquired information, and developed the facility needed for average performance of the job. The length of time this would take depends on the nature and complexity of the work.

²⁰ See SSR 82-62: Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, in General. See also POMS DI 25001.001A.64 Medical and Vocational Quick Reference Guide, available at: <https://secure.ssa.gov/poms.NSF/lrx/0425001001>.

²¹ See POMS DI 25001.001A.64 Medical and Vocational Quick Reference Guide, available at: <https://secure.ssa.gov/poms.NSF/lrx/0425001001>.

²² 20 CFR 404.1565 and 416.965.

²³ 20 CFR 404.1594(f)(7) and 416.994(b)(5)(vi). At the last two steps in the CDR sequential evaluation process, we do not consider work an individual does while receiving disability benefits to be past relevant work or past work experience; see 20 CFR 404.1594(i)(1) and 416.994(b)(8)(i).

to considering the individual's RFC and vocational factors of age, education, and work experience.²⁴ Work experience means skills and abilities an individual has acquired through their PRW which may show the type of work they may be expected to do.²⁵ Our rules categorize work experience as follows: none, unskilled, semi-skilled, or skilled.²⁶

Our rules recognize that individuals with skilled or semi-skilled work experience may have a vocational advantage if their skills are transferable, meaning they can be used in other work.²⁷ Transferability of skills depends largely on the similarity of occupationally significant work activities among different work.²⁸ The transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved.²⁹ If skills are so specialized or are acquired in such an isolated vocational setting that they are not readily usable in other industries, jobs, and work settings, they are not transferable.³⁰ If an individual is age 55 or older and limited to sedentary work, or age 60 or older and limited to light work, we consider skills transferable only if they can be used in other work with very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry.³¹

If the individual can adjust to other work that exists in significant numbers in the national economy, considering their residual functional capacity, age, education, and

²⁴ 20 CFR 404.1520(a)(4)(v) and (g), 404.1512(b)(3), 404.1560(c), 416.920(a)(4)(v) and (g), 416.912(b)(3), and 416.960(c).

²⁵ 20 CFR 404.1565 and 416.965.

²⁶ 20 CFR 404.1568 and 416.968. We consider occupations with specific vocational preparation (SVP) levels one and two to be unskilled. Occupations with SVPs of three and four are semi-skilled, and occupations with an SVP of five or greater are skilled. See also DOT Appendix C available at: https://www.occupationalinfo.org/appendxc_1.html#II and POMS DI 25015.015.B.1 Work Experience as a Vocational Factor, available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0425015015>.

²⁷ 20 CFR 404.1568(d) and 416.968(d).

²⁸ *Id.* See also SSR 82-41 Title II and XVI: Work Skills and Their Transferability as Intended by the Expanded Occupational Regulations Effective February 26, 1979.

²⁹ See 20 CFR 404.1568(d)(2) and 416.968(d)(2).

³⁰ See 20 CFR 404.1568(d)(3) and 416.968(d)(3).

³¹ See 20 CFR 404.1568(d)(4) and 416.968(d)(4).

work experience, we find they are not disabled. If an individual cannot adjust to other work that exists in significant numbers in the national economy, we find that they are disabled.³²

To support a determination or decision at step five of the sequential evaluation process, we must evaluate whether there is other work existing in significant numbers in the national economy that the individual can do given their RFC and vocational factors.³³ As part of this evaluation, we use the medical-vocational profiles and the medical-vocational guidelines, also commonly known as the “grid rules.”³⁴ We use three assessments to determine whether an individual can perform work that exists in significant numbers at step five of the sequential evaluation process (or at the final step in the sequential evaluation process used in CDRs):

1. Medical-vocational profiles;
2. Medical-vocational guidelines to direct a decision; and
3. Medical-vocational guidelines as a framework.

Medical-Vocational Profiles

We consider whether the individual’s RFC and vocational factors of age, education, and work experience match the criteria of a medical-vocational profile. Each medical-vocational profile shows an inability to make an adjustment to other work.³⁵ If an individual’s medical and vocational factors match the criteria of a medical-vocational profile, we find the individual disabled.³⁶ If not, we consider the medical-vocational guidelines in our disability finding.³⁷

The three medical-vocational profiles are:

³² 20 CFR 404.1520(a)(4)(v) and 416.920(a)(4)(v).

³³ 20 CFR 404.1560(c)(2) and 416.960(c)(2).

³⁴ See 20 CFR 404.1560(c), 404.1562, 404.1569, 416.960(c), 416.962, and 416.969.

³⁵ See 20 CFR 404.1520(g)(2) and 416.920(g)(2).

³⁶ See 20 CFR 404.1562 and 416.962.

³⁷ 20 CFR 404.1569 and 416.969.

1. *If an individual has done only arduous unskilled physical labor.*³⁸ This profile applies to an individual who has no more than a marginal education (6th grade or less), has work experience of 35 years or more during which the individual did only arduous unskilled physical labor, is not working, and is no longer able to do this kind of work because of a severe impairment(s). We call this the *arduous unskilled work* profile and this profile considers 35 years of past work. Our proposed changes to the definition of PRW will neither change this profile nor affect the proportion of individuals found disabled through this profile.

2. *If an individual is at least 55 years old, has no more than a limited education, and has no past relevant work experience.*³⁹ This profile applies to an individual who has a severe MDI(s), is at least 55 years old, has no more than a limited education (11th grade or less), and has no PRW experience. We call this the *no work* profile and this profile considers 15 years of past work. As discussed below, our proposed changes to the definition of PRW will increase the proportion of individuals found disabled through this profile.⁴⁰

3. *If an individual has made a lifetime commitment.*⁴¹ This profile applies to an individual who is not working at SGA level, is at least 60 years old, has no more than a limited education (11th grade or less), and has a lifetime commitment (30 years or more) to a field of work that is unskilled, or is skilled or semi-skilled but with no transferable skills, that the individual can no longer perform because of a severe impairment(s). We call this the *lifetime commitment* profile and this profile considers 30 years of past work.

³⁸ 20 CFR 404.1562(a) and 416.962(a). See also SSR 82-63: Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work. When we say “not working,” we mean not engaging in substantial gainful activity.

³⁹ 20 CFR 404.1562(b) and 416.962(b). See also SSR 82-63: Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work.

⁴⁰ 20 CFR 404.1560(b)(1) and 416.960(b)(1).

⁴¹ See POMS DI 25010.001B.3 medical-vocational profiles, available at: <https://secure.ssa.gov/poms.NSF/lrx/0425010001>.

Our proposed changes to the definition of PRW will neither change this profile nor affect the proportion of individuals found disabled through this profile.

Table 2: Medical Vocational Profiles

Medical-Vocational Profiles	Age	Education (no more than)	Past Work Experience	Is this profile affected under the proposed rule?
Arduous unskilled work profile	No minimum age.	Marginal (typically 6 th grade or less).	35 years or more in which the individual performs only arduous unskilled physical labor.	No.
No work profile	55 years or older.	Limited (typically 11 th grade or less).	No PRW.	Yes, under the proposed rules the relevant work period would be reduced from 15 to 5 years.
Lifetime Commitment profile	60 years or older.	Limited (typically 11 th grade or less).	30 years or more to a field of work that is unskilled (or if skilled or semi-skilled with no transferrable skills).	No.

Medical-Vocational Guidelines to Direct a Decision

If an individual's RFC and vocational factors do not match a medical-vocational profile, we consider the medical-vocational guidelines.⁴² The medical-vocational guidelines reflect the analysis of vocational factors in combination with RFC. Where the findings of fact made with respect to vocational factors and RFC coincide with all of the criteria of a particular medical-vocational rule that rule directs a decision as to whether the individual is disabled or not disabled.⁴³ When the medical-vocational guidelines are used to direct a decision, there are some circumstances where the existence or non-existence of transferable skills acquired from PRW is material to the decision.⁴⁴

⁴² See 20 CFR Part 404 Subpart P Appendix 2, 20 CFR 404.1569 and 416.969.

⁴³ 20 CFR Part 404 Subpart P Appendix 2 rule 200.00(a).

⁴⁴ For example, rule 201.03 directs a decision of not disabled for an individual with a certain specified RFC and vocational factors who has transferable skills, while rule 201.02 directs a decision of disabled for an otherwise similar individual who does not have transferable skills.

Medical-Vocational Guidelines as a Framework

We use the medical-vocational guidelines as a framework to guide our decision-making when one or more of the findings of fact do not coincide with all of the corresponding criteria of a rule.⁴⁵ Because the medical-vocational guidelines only consider exertional limitations, we also use them as a framework when an individual's RFC includes only nonexertional limitations.⁴⁶ In addition, we use them as a framework when an individual's RFC includes both exertional and nonexertional limitations and the applicable medical-vocational rule, considering only the exertional limitations, will direct a decision of "not disabled."⁴⁷

When the medical-vocational guidelines are used as a framework, there are some circumstances where the existence or non-existence of transferable skills acquired from PRW is material to the decision.⁴⁸

Information We Request and Consider at Steps Four and Five of the Sequential Evaluation Process

We ask individuals about their past work when we need the information to make a determination or decision on their claim.⁴⁹ In most circumstances during the initial application, individuals will be asked to complete the Adult Disability Report (form SSA-3368), which includes a section on job history.⁵⁰ On this form, individuals are asked to

⁴⁵ *Id.*

⁴⁶ 20 CFR 404.1569a(c)(2) and 416.969a(c)(2).

⁴⁷ 20 CFR 404.1569a(d) and 416.969a(d).

⁴⁸ For example, rule 201.03 directs a decision of not disabled for an individual with a certain specified RFC and vocational factors who has transferable skills, while rule 201.02 directs a decision of disabled for an otherwise similar individual who does not have transferable skills.

⁴⁹ 20 CFR 404.1565(b) and 416.965(b).

⁵⁰ Available at: <https://www.ssa.gov/forms/ssa-3368.pdf>. The initial application also collects basic information about a claimant's work. For example, the form SSA-16 (Application for Disability Insurance Benefits) prompts respondents to identify: the name and address of any employers the applicant has worked for in the current or past year; the length of employment with each employer; whether the respondent was self-employed; the total earned income from the current and past year. The form SSA-8000 (Application

complete work history information for up to 5 jobs they held in the last 15 years before they became unable to work. The information requested includes the job title and type of business; the dates when work began and ended; and hours per day, days per week, and rate of pay.⁵¹ If an individual only had one job in the last 15 years, they provide additional detail about that job (these additional details are the same as those collected on the SSA-3369 discussed below).

If the individual identifies more than one job in the past 15 years on their Adult Disability Report, and we need additional information about their work history, we will then re-contact the individual to ask that they complete a separate Work History Report (form SSA-3369).⁵² SSA processes roughly 1.6 million Work History Reports annually, which represents approximately 85 percent of all adult initial claimants.

The individual has the burden of proof to show that they cannot perform PRW, and they are required to provide information about their PRW if we request it.⁵³ In some cases, we may request work history information from an employer or a third party.⁵⁴ For each job held (regardless of how long the job was held for), we request information regarding: the dates worked, rate of pay, hours per day and week; a description of the job including all of the duties performed; and any tools, machinery, and equipment used.⁵⁵ We also request information about the amount of walking, standing, sitting, lifting, and carrying during work each day and to recall, for each job, both the most weight ever lifted

for Supplemental Security Income) prompts respondents to identify: the name and address of employers who have provided wages on or after the filing date of the application; the date last worked, last paid, and next paid; the total monthly wages; the name and address of any additional employers the respondent anticipates working for in the next 14 months; whether the respondent was self-employed; and this year's, last year's, and next year's expected self-employment income. The information collected on the initial application would not be changed as a result of this proposal.

⁵¹ See 20 CFR 404.1565(b) and 416.965(b).

⁵² Available at: <https://www.ssa.gov/forms/ssa-3369.pdf>.

⁵³ 20 CFR 404.1512(a)(1)(iv), 404.1560(b)(2), 404.1565(b), 416.912(a)(1)(iv), 416.960(b)(2), and 416.965(b).

⁵⁴ 20 CFR 404.1565(b) and 416.965(b).

⁵⁵ *Id.*

as well as the heaviest amount of weight that was frequently lifted. Individuals must also answer other questions about other physical or mental demands of the work.⁵⁶

Proposed Change

We propose to reduce the PRW period from the current 15 years to 5 years. In many cases, this revision will reduce the number of jobs in an individual's work history that we will consider at step four of the sequential evaluation process when we determine whether an individual can perform their PRW. At step five, this revision will also change the previous work experience that we will consider under the medical-vocational guidelines. Because a step four finding can result in a denial but not an allowance (in FY 2022, 5.8 percent of decisions for adult claimants were denials at step four), we anticipate that we will make proportionally fewer denial decisions at step four and proportionally more decisions at step five. Because step five decisions require us to also consider work in the national economy an individual can perform based on their RFC and vocational factors, we expect that shifting decisions from step four to step five with less past work considered will result in more allowance decisions. We propose to make this revision in 20 CFR 404.1560, 404.1565, 416.960, and 416.965.

We also propose to remove a current sentence in 20 CFR 404.1565(a) and 416.965(a) that explains the intent of our work experience rules is to "ensure that remote work experience is not currently applied." We propose to remove this sentence to reflect that the arduous unskilled work profile and the lifetime commitment profile consider work history for a period longer than the proposed five year relevant work period.

Justification for Change

⁵⁶ *Id.*

We have long recognized that a gradual change occurs in most jobs in the national economy, so that after a certain period of time it is not realistic to expect that skills and abilities acquired in these jobs continue to apply.⁵⁷ In this rule, we propose a period of 5 years because it reflects the shorter collection cycles of occupational surveys and data programs, which establish a frame of reference for understanding changing occupational requirements.

Changing the PRW period from the current 15 years to 5 years will better account for the diminishing relevance of work skills over time and reduce the burden on individuals applying for disability. This change will allow us to improve the quality of the information we receive by eliminating the individual's need to recall and consistently report detailed information about less recent work, reduce the time spent filling out work history forms, and overall reduce waiting times. Accordingly, this proposed change will improve customer service and adjudicative efficiency.

1. The Proposal Will Allow Individuals to Focus on the Most Current and Relevant Information about their Past Work

We largely rely on individuals' self-reporting for information about past work,⁵⁸ and self-reported information is often incomplete. Our adjudicative experience shows that individuals' self-reported work information tends to be less accurate and complete for jobs that were held in the more distant past. In many cases, individuals do not have accurate or complete recall of each job they have performed during the past 15 years, including detailed physical and mental requirements, hours worked, and rates of pay. For example, under our current process, if an individual served as a fast-food cook for 3

⁵⁷ 20 CFR 404.1565(a) and 416.965(a); SSR 82-62 Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, in General.

⁵⁸ 20 CFR 404.1565(b) and 416.965(b). See also POMS DI 22515.001 Overview of Vocational Evidence Development, available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0422515001>.

months 13 years ago, we ask them to tell us details such as the number of hours spent walking, standing, sitting, and carrying during the workday as well as both the most amount of weight they ever lifted while on the job and the heaviest weight frequently lifted.

In particular, individuals who struggle to maintain sustained employment, such as those who change jobs frequently or who have gaps in their work histories, may have difficulty remembering their past jobs and specific details. As a result, individuals completing work history questions on our forms, even with assistance, often leave many sections blank or incomplete. We estimate that about 30 percent of disability applications with 15 years of work history include sufficient detail at the time of application. Often DDS examiners request additional information before they can make a determination.⁵⁹ Ultimately, if an individual does not give us the evidence we need or request, our regulations provide that we will have to make a determination or decision based on the available evidence.⁶⁰ Because the individual must identify the functional requirements of jobs they held, a lack of information regarding functional requirements may impede our ability to determine if an individual can do PRW. This proposal will reduce the likelihood of our not having a complete work history.⁶¹

Relatedly, on May 16, 2023, in support of the White House Legal Aid Interagency Roundtable led by the Department of Justice, we met with a diverse panel of legal aid groups, community advocacy organizations, and other claimant representative

⁵⁹ In POMS DI 22505.014, we direct the DDS to allow a minimum of 10 calendar days for response to initial outreach, and we direct DDS to make a follow up once by telephone or letter and allow a minimum of 10 additional calendar days to respond. We also provide time to account for the mailing process. For claimants requiring special handling, DDS must make a reasonable effort to identify and involve a third party. See <https://secure.ssa.gov/apps10/poms.nsf/lnx/0422505014>.

⁶⁰ 20 CFR 404.1516, 404.1520b(b)(3), 416.916, and 416.920b(b)(3).

⁶¹ In FY 2022, 18% of Adult Initial claims were closed as insufficient evidence, which includes missing information on the SSA-3369 or other missing work history information, but also includes claims that were closed for missing information unrelated to work history.

organizations to discuss multiple Social Security issues of concern to them.⁶² During our listening session, participants specifically referenced their experience that their clients had difficulty remembering older work information and reporting it accurately. Multiple participants particularly noted that the claimants tire of the work history questions and do not provide the detailed, accurate information that is critical for making decisions. One participant in the listening session noted that “for our client base, there is just not enough memory to go back and remember all the things they did, what different jobs they had and when they had them.... [F]or a lot of my client base, the forms, they just get tired of them. They're overwhelmed by them. They end up filling out something sort-of not very thoroughly and not very thoughtfully.” A separate participant noted that claimants often forget the physical and mental requirements of jobs, and are more likely to underestimate them than overestimate them. Another participant provided an example of a job that required a claimant to lift a box of copy paper that weighed 25 pounds. They said that claimants might not know the weight of an item like that and might inadvertently report that they had to lift 10 pounds. As a result, participants noted that work history information is often incomplete or inaccurate.

In addition, we conducted an Adult Disability Applicant Survey that concluded in June 2023, and we received feedback from more than 15,000 recent disability applicants about their experience with the disability application process.⁶³ Within the survey, we asked questions about completing form SSA-3369-BK (Work History Report) and work

⁶² Attendees included representatives from Legal Aid Foundation of Los Angeles, Urban Justice Center, Tennessee Alliance for Legal Services, Vermont Legal Aid, Legal Aid of Arkansas, New Hampshire Legal Assistance, Disability Law Center (Massachusetts), Coast to Coast Legal Aid (South Florida), Community Legal Services of Philadelphia, Legal Counsel for Health Justice, The Arc, National Association for Disability Representatives, Advocacy and Training Center, Inner City Law Center, New York Legal Assistance Group, Dallas Aging and Disability Resource Center, and Bay Area Legal Aid. An excerpt of the relevant portion of the listening session will be available upon request.

⁶³ The Adult Disability Applicant Survey is qualitative in nature, as it is rooted in applicants' perceptions and memory of the application process. However, the use of a qualitative survey is consistent with Executive Order 14058, which defines “customer experience” as the public’s perceptions of and overall satisfaction with interactions with an agency, product, or service.

history reporting generally. Many respondents expressed difficulties remembering and accurately reporting details about 15 years' worth of work history. Some respondents said they did not maintain records for that long and were unable to accurately report this information, while other respondents said the request for 15 years' worth of information took a long time to complete, particularly for individuals who may be dealing with major life transitions or have more severe impairments.

Taken together, by considering only more recent job information, which individuals are likely to recall in greater depth, we will improve the quality of evidence on which our adjudicators base their decisions.

2. The Proposal Will Reflect the Current Evidence Base on Changes Over Time in Worker Skill Decay and Job Responsibilities

We propose to revise the definition of the relevant work period to more accurately reflect how an individual's acquired skills and knowledge may become less relevant over time after they have stopped performing previous work. When we defined past work in our regulations in 1978, we concluded that 15 years was an appropriate guide.⁶⁴ Research indicates that skills not used over extended periods become less recoverable when later called upon, meaning they provide less vocational advantage. Most of the major surveys and data programs concerning occupational requirements conducted in recent decades have refreshed their data in collection cycles ranging from 5 to 10 years.⁶⁵ We understand that the rate of skills decay and changes in work requirements have a considerable impact on the workforce. A 2016 BLS report explains that changes in job skill requirements "are a function of shifts in skill requirements within occupations as

⁶⁴ Handel, Michael J., *Dynamics of Occupational Change: Implications for the Occupational Requirements Survey*, July 15, 2016 (Table 23), available at: <https://www.bls.gov/ors/research/sample-design/pdf/dynamics-occupational-change-2016.pdf>.

⁶⁵ *Id.*

well as changes in employment shares between occupations.”⁶⁶ The report acknowledges that any conclusions based on measurements of these two aspects of job change will be inexact as the data continue to accrue, and it goes on to point out that questions remain regarding “the magnitudes of within occupation changes along various dimensions, such as physical demands ... or specific cognitive skills.” Nevertheless, the report’s author validated the use of data collection cycles between five and ten years as a reasonable timeframe for measuring and documenting changing occupational requirements. Accordingly, we also propose that a past relevant work period of five years is reasonable.

Two additional markers that illustrate significant occupational change within a 5-10-year period are the frequency that the Standard Occupational Classification (SOC) system is updated (i.e., 2000, 2010, and 2018) and various state re-licensing, re-certification, and continuing education requirements (typically once every 1 to 5 years, depending on the profession).⁶⁷ The SOC system is updated to reflect changes in the economy and the nature of work,⁶⁸ and the frequency at SOC system is updated balances the need for an up-to-date taxonomy against the ability to track occupational changes over time and the desire to minimize disruption to survey collection processes and data series.⁶⁹ Collectively, the research and evidence suggest that considering occupational change or skills decay warrants measuring or ensuring currency over a 5-10 year period.

Other research supports that unused manual work skills generally diminish in less than 10 years. Using data from the Occupational Information Network (O*NET),⁷⁰

⁶⁶ *Id.*

⁶⁷ The SOC is a Federal statistical standard used by Federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.

⁶⁸ Revising the Standard Occupational Classification, available at: https://www.bls.gov/soc/revising_the_standard_occupational_classification_2018.pdf.

⁶⁹ See Monthly Labor Review: Revising the Standard Occupational Classification system for 2010, available at: <https://www.bls.gov/opub/mlr/2010/08/art3full.pdf>.

⁷⁰ The Occupational Information Network (O*NET) is sponsored by the U.S. Department of Labor. O*NET provides descriptive information about occupations and helps people find the training and jobs they need, and employers the skilled workers necessary to be competitive in the marketplace. For more information, see: <https://www.onetonline.org>.

combined with a worker-level panel, researchers in 2020 found that manual skills tend to erode quickly when not used, with an estimated loss of 50 percent over 7.5 years.⁷¹ This 2020 study by Lise and Postel-Vinay also supports the premise that manual skills developed in jobs held longer than 10 years ago likely have diminished relevance and are unlikely to be well-retained by individuals. By contrast, jobs held no more than five years in the past provide a vocational advantage because the skills an individual learned are more current, and the occupation is less likely to have changed.

3. The Proposal Will Reduce Processing Time and Improve Customer Service

This revision will also help improve our customer service by reducing our time burden to develop detailed work history for jobs performed in the distant past that are less relevant for the reasons stated above. Overall, we will be able to make determinations and decisions more quickly, which also ultimately benefits the public we serve. The U.S. Supreme Court previously recognized the “need for efficiency [in our adjudicative process] is self-evident” and important given that our hearing system is “probably the largest adjudicative agency in the western world” because we adjudicate millions of claims for disability benefits each year.⁷²

This proposal will reduce our burden associated with recontacting individuals or other sources to fully develop evidence in some claims. As stated above, we have found that individuals have difficulty providing accurate and complete information about work they have not done in many years. When an individual does not provide complete information about all of the jobs they held in the past 15 years, we try to recontact them to obtain the additional information.⁷³ Our efforts to develop more complete information

⁷¹ Lise, J., & Postel-Vinay, F. (2020). Multidimensional Skills, Sorting, and Human Capital Accumulation. *The American Economic Review*, 110(8), 2328–2376, available at: <https://www.jstor.org/stable/26966333>.

⁷² *Heckler v. Campbell*, 461 U.S. 458, 461, n.2 (1983).

⁷³ 20 CFR 404.1565(b) and 416.965(b).

about past work may also involve contacting third parties, such as former employers.⁷⁴ Our task of developing complete information about how a particular job was performed can be difficult and time consuming because individuals, past employers, and other third parties might not recall the details of nor have records for work performed many years in the past. This difficulty is further compounded when prior employers are no longer in existence or otherwise not available to provide evidence. Our efforts to help individuals obtain and provide complete evidence slow our adjudication of their claims. Accordingly, we anticipate this proposal will reduce individual wait times and our total pending claims.

4. The Proposal Will Reduce Burden on Individuals

This proposal will reduce the information collection burden on individuals by reducing, on average, the number of jobs about which they must provide us with information. This anticipated burden reduction is supported by additional information collected during the Adult Disability Applicant Survey. Respondents reported a wide range of completion times for the SSA-3369-BK. SSA currently reports an average time burden of 60 minutes. However, respondents indicated that based on their own experiences and memories, the time it takes to complete the entire process, including gathering the information and completing the form, can take anywhere from fewer than 60 minutes up to several hours, depending on an individual's work history. The median time burden reported was 2 hours for individuals who reported a work history that included work performed 6 years before the application and earlier, but 90 minutes for individuals who reported a work history that included only work performed 1 to 5 years prior to application.

⁷⁴ *Id.*

These results suggest that even if individuals report different time burden associated with PRW, the data consistently show that a work history ending at the 5-year mark is notably less burdensome than a longer work history.

The table below indicates that a longer retrospective period generally includes more jobs than a shorter one. As the Adult Disability Applicant Survey suggests, fewer jobs to report may mean less burden on individuals. The following table, which is based on a sample of administrative data for research purposes, shows the median number of employers individuals of various ages have had in the previous 5, 10, and 15 years.⁷⁵

Median number of employers in retrospective time periods, by age group			
Age group	Past 5 years	Past 10 years	Past 15 years
All (25–65)	2	3	5
25–29	4	7	7
30–34	3	5	10
35–39	2	4	8
40–44	2	4	7
45–49	2	3	6
50–54	2	3	5
55–59	1	2	4
60–65	1	2	3
Sources: 2019 Longitudinal Employee-Employer Data (LEED) 1 Percent File, Disability Research File (Title II and Title XVI), and Numident. Note: N = 9,087 (includes individuals with missing or unknown sex in the data set).			

The table shows that, for adults ages 25-65, use of a 5-year relevant work period will reduce the median number of past employers. Among adults in that age group, the

⁷⁵ Sources: 2019 Longitudinal Employee-Employer Data (LEED) 1percent File, Disability Research File (Title II and Title XVI), and Numident; N = 9,087. The LEED is a sample of administrative data we use for research purposes. A unique employer is not necessarily the same as a unique job. Individuals may have worked in multiple jobs with the same employer over a number of years. For instance, an individual could have started working for an employer in a lower-skill job and later received a promotion to a higher-skill job. On the other hand, individuals may have worked in the same type of job for different employers. For example, an individual may have been a cashier in more than one grocery store chain.

median number of employers for the past 15 years is 5 and the median number for the past 5 years is 2. Therefore, reducing the relevant work period to 5 years will reduce the burden on individuals because many will need to report information about fewer employers.

We use different forms to collect work history information necessary for the type and level of adjudication of a claim. As the information below demonstrates, using a 5-year relevant work period will reduce the burden on individuals completing these forms.

At the time of application, individuals submit the SSA-3368 form (Disability Report – Adult) online, through the mail, or in-person at a field office, which we use to collect a wide range of information, including medical and vocational information needed to adjudicate adult disability claims.⁷⁶ The form SSA-3368 requires detailed work history information from the individual. It asks individuals to complete work history information for up to 5 jobs they held in the last 15 years before they became unable to work. The information requested includes the job title and type of business; the dates when work began and ended; and hours per day, days per week, and rate of pay.⁷⁷ If the individual only had one job in the last 15 years, they provide additional detail about that job, including information regarding what they did all day in that job, the machines or tools they used, the knowledge or technical skills they acquired, and the job’s specific physical demands. The current time burden estimate for an individual to complete form SSA-3368 is 90 minutes, which includes reading the instructions, gathering facts, and answering the questions. We estimate that, with the changes we propose, filling out form SSA-3368 will reduce the time burden on an individual to complete the form to 80 minutes on average,

⁷⁶ We collect information on the form SSA-3368 in several modalities. In addition to the standard paper form, which is available in English and Spanish languages, we also offer an Internet-based modality. We collect this information for adult initial claims and age-18 redeterminations.

⁷⁷ See 20 CFR 404.1565(b) and 416.965(b).

as explained below.⁷⁸ The change to form SSA-3368 will result in an estimated burden savings of 376,419 hours for individuals.

Generally, the State Disability Determination Services (DDS) use form SSA-3369-BK to request detailed information from individuals regarding any jobs they have held during the 15-year period and for which they have not already provided detailed information on the form SSA-3368.⁷⁹ The DDSs typically sends this form to approximately 85 percent of adult initial claimants. The current time burden estimate for an individual to complete form SSA-3369 is 1 hour, which includes reading the instructions, gathering facts, and answering the questions about each job the individual has performed in the last 15 years. We estimate that, with the changes we propose, filling out form SSA-3369 will reduce the time burden on an individual to complete the form to 40 minutes on average, as explained below.⁸⁰ The change to form SSA-3369 will result in an estimated burden savings of 530,650 hours for individuals.

At the hearings level, adjudicators may collect any additional or changed work history using the form HA-4633 (Claimant's Work Background). The current time burden estimate for an individual to complete form HA-4633 is 30 minutes. We estimate that, with the changes we propose, filling out the form HA-4633 will reduce the time burden on an individual to complete the form to 20 minutes on average as explained below. The change to HA-4633 form will result in an estimated burden savings of 31,666 hours.

Overall, the total estimated burden savings on all three forms (SSA-3368, SSA-3369, and HA-4633) is estimated to be 938,735 hours.

⁷⁸ See the Paperwork Reduction Act section, below.

⁷⁹ We currently collect information on the form SSA-3369 using a paper form, which is available in English and Spanish languages. In certain instances, field offices collect information instead of the DDS. For more information, see POMS DI 11005.025 Completing the SSA-3369, available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0411005025>.

⁸⁰ See the Paperwork Reduction Act section, below.

Conclusion: Improving the balance between information utility and burden reduction

In developing this proposed rule, we sought to balance the need for accurate work history information for our disability determinations with the goals of obtaining only the most relevant information, reducing burden on individuals, and decreasing the overall disability determination time. Ultimately, we determined that work experience from jobs performed more than 5 years ago may not be as relevant as work experience from jobs performed 5 years ago or less. Also, based on our research, it is significantly less burdensome for individuals to report a job history of 5 years or less. Further, developing that job history would save time and increase efficiency for our personnel. Based on these factors (as outlined in greater detail above), we propose the 5-year period as the best balance between obtaining an accurate work history and ensuring optimal burden reduction and time savings.

How the Proposed Revisions Will Affect our Decision Making at Step Four of the Sequential Evaluation Process

Revising the relevant work period from the current 15 years to 5 years will reduce the number of jobs in an individual's work history that we will consider at step four and at the corresponding step in the evaluation process used in CDRs when we determine whether an individual can perform their PRW. Because a step four finding can result in a denial but not an allowance, we anticipate that a smaller proportion of denial decisions will be made at step four and that a greater proportion of all our decisions will be made at step five.

Under the proposed rule, some claims that would have been a step four denial under the current rules would instead result in a step five allowance. For example: A 53-year-old individual applying for SSI has a high school education and an RFC consistent with unskilled sedentary work. The individual last performed sedentary, unskilled work as an order clerk 10 years ago. The work as an order clerk was SGA, and the individual did it long enough to learn to do the job at an average level. The individual has acquired no transferrable skills from other work. Under current rules, the individual would be

found “not disabled” because they retain the RFC to perform their PRW as an order clerk. With a five-year PRW period, however, the individual would be found “disabled” because 1) the work as an order clerk would not have been performed recently enough to qualify as PRW, and 2) at step five, medical-vocational rule 201.12 directs a “disabled” finding for a person with the individual’s RFC, age, education, and work history.

However, other claims that would have a step four denial under the current rules would still result in a step five denial under the proposed rules. For example: Assume the same facts as the previous example, except that the individual is 43 years old. Although the individual’s work as an order clerk would not qualify as PRW under the rules we are proposing, the individual would still be found “not disabled.” While the individual would be found unable to perform their PRW, medical-vocational rule 201.27 would direct a denial at step five given the individual’s RFC, age, education, and work history.

How the Proposed Revision Will Affect Decision Making at Step Five of the Sequential Evaluation Process

The proposed revision to reduce the relevant work period from 15 to 5 years will affect our decision making at the fifth step in the sequential evaluation process we use in initial claims and at the corresponding step in the evaluation process used in CDRs.

1. How the Change Will Affect Eligibility for the No Work Profile

Revising the relevant work period to five years will make it more likely that an individual will meet the no work profile.⁸¹ The no work medical-vocational profile

⁸¹ Our Office of the Chief Actuary estimates that for old age, survivors, and disability insurance (OASDI) and SSI combined, about two percent of the total marginal increase in disability allowances attributable to the assumed implementation of this proposed rule would be additional claims allowed under the no work profile, with the majority of this effect on SSI adult disability awards. This translates to annual average increases of fewer than 50 OASDI disability awards per year and 400 SSI adult disability awards per year over fiscal years 2025 through 2033. Some of these additional awards under the no work profile could otherwise be allowed under other vocational rules. The proposed change will also likely result in more

directs a finding of disabled for any individual 55 or older with no more than limited education, no PRW, and a severe impairment. Revising the relevant work period from 15 to 5 years will increase the applicability of the no work profile because any individual who had not worked during the relevant 5-year period will be deemed to have no PRW. This effect will increase at each level of the administrative review process because the relevant work period is measured from the date of adjudication, in most cases, and will shift as a case moves through administrative review.⁸² As a result, work found to be PRW at earlier administrative levels may cease to qualify as PRW at later stages in the review process.

2. How the Change Will Affect Outcomes Based on Medical-Vocational Guidelines using Transferable Skills

Revising the relevant work period to five years will make it more likely that individuals will lack transferable skills. Some of the rules under the medical-vocational guidelines direct different decisions depending on whether individuals have acquired transferable skills from their past work. Because work performed 6 to 15 years prior to our determination or decision will no longer qualify as past work, we will no longer consider skills acquired from such work to be transferable to other skilled or semi-skilled work.⁸³ Therefore, more claims will be decided based on rules that direct a finding that the individuals are disabled.⁸⁴

instances in which an individual's RFC and vocational factors align with a grid rule that directs a finding that the individual is disabled because of a lack of any PRW. This situation will occur if the individual's most recent work experience was 6-15 years prior to the determination or decision. For example, rule 203.03 directs a "not disabled" finding for an individual with PRW, while rule 203.02 directs an allowance for an otherwise similar individual with no PRW.

⁸² For more information, see section *Definition of PRW and the Relevant Work Period*, above.

⁸³ See 20 CFR 404.1568 and 416.968.

⁸⁴ Our Office of the Chief Actuary estimates that for OASDI and SSI combined, about 30 percent of the total marginal increase in disability allowances attributable to the assumed implementation of this proposed rule would be allowed due to additional awards for individuals no longer being assessed to have transferable skills, whereas they would have such skills under our current rule. This translates to an average of about 7,500 additional OASDI disability awards and 2,500 additional SSI adult disability awards per year over fiscal years 2025 through 2033.

Under the medical-vocational guidelines, the presence of transferable skills has a material effect on the outcomes of determinations and decisions for individuals age 50 or older in several instances.⁸⁵ Furthermore, because the relevant work period will shift as a case moves through the administrative review process,⁸⁶ work found to provide transferable skills at earlier administrative levels will often cease to qualify as PRW at later stages in the review process.

Effect on Current Subregulatory Guidance

If we adopt the proposed rule as a final rule, we will rescind several current Social Security Rulings (SSRs) because they will be inconsistent with the final rule. The list includes:

- SSR 82-61: Titles II and XVI: Past Relevant Work -- The Particular Job or the Occupation as Generally Performed. We will rescind this SSR because we propose to revise how we consider past relevant work.
- SSR 82-62: Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, In General. We will rescind this SSR because we propose to revise how we consider past relevant work.
- SSR 82-63: Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work. We will rescind this SSR because we propose to revise how we consider past relevant work.
- SSR 86-8: Titles II and XVI: The Sequential Evaluation Process. We will rescind this SSR because we propose to revise how we consider past relevant work.

We plan to issue updated subregulatory guidance and will also provide training to our

⁸⁵ For example, rule 201.03 directs a decision of not disabled for an individual with a certain specified RFC and vocational factors who has transferable skills, while rule 201.02 directs a decision of disabled for an otherwise similar individual who does not have transferable skills.

⁸⁶ For more information, see section *Definition of PRW and the Relevant Work Period*, above.

adjudicators.

Solicitation for Public Comment

We are seeking public comment on this proposed rule. Questions the public may wish to consider when evaluating this proposed rule:

- Is there data or other evidence supporting a relevant work period other than 5 years that could be used to inform this rulemaking?
- Do you have any additional information about whether we should revise the no work profile to maintain a 15-year period as it exists under our current rules?
- Do you have any additional information about whether we should end use of the medical-vocational profiles because they require collection and development of more than 5 years of work history?
- The current time burden estimate to complete form SSA-3369-BK (OMB No. 0960-0578) is 60 minutes for individuals. We are estimating (see Paperwork Reduction Act of this preamble) the revised form requiring only 5 years of work history will take 40 minutes for individuals to complete. Do you agree with this new estimate? Why or why not?
- Are there areas where we could further simplify this form or other aspects of the information collection process while still collecting all the information that is required to make an accurate disability determination?
- We currently ask individuals to list all jobs they have held during the relevant work period, regardless of the length of time the job was held. Should we consider revising this requirement so that respondents do not need to report jobs held for short periods of time (e.g., one month)? If so, what threshold should we set and what evidence supports this threshold?

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Orders 13563 and 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand. For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.*, grouping and order of sections, use of headings, or paragraphing?

When Will We Start to Use This Rule?

We will not use this rule unless we publish a final rule in the *Federal Register* after evaluating the public comments. All final rules we issue include an effective date.

We will continue to use our current rules until that date. If we publish a final rule, we will

include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule. If we adopt the proposed rule as a final rule, we will begin to use it in all claims awaiting a final determination or decision as of the effective date of the final rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and determined that this rule is significant under Section 3(f)(1) of Executive Order 12866, as supplemented by Executive Orders 13563 and 14094. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

The Office of the Chief Actuary (OCACT) estimates that implementation of this proposed rule would result in an increase in scheduled SSDI benefits of \$22.9 billion, a net reduction in scheduled old-age and survivors insurance (OASI) benefits of \$6.5 billion, and an increase in Federal SSI payments of \$3.9 billion in total over fiscal years 2024 through 2033, assuming implementation for all decisions made on or after May 6, 2024. OCACT estimates that this rule would primarily affect individuals ages 50 and older. These estimates assume that because more people will be receiving SSDI until they reach full retirement age, fewer people will be receiving OASI; this does not reflect any change to OASI eligibility.

To develop this estimate, we conducted a case study of 1,024 disability determinations to determine the effect on determinations at the DDS and hearings before administrative law judges (ALJ). Using a stratified random sample of final denial decisions in FY 2016 and appropriate available medical evidence, case reviewers evaluated the effects on the medical determination of reducing the relevant work period

from 15 to 5 years. The sample included determinations of both initial applications and CDRs for OASDI and SSI adults at the DDS and ALJ hearings level. The sample also included both current rule step four and step five denials.

OCACT's analysis of the study results indicates that for denials at step four that are occurring under current rules, roughly 50 percent would no longer be denied under the proposed rule and thus would require a determination at step five. The study further indicates that about one-third of these cases would be allowed at step five, so that overall, about 17 percent of current step four denials would be allowed at step five. For denials at step five under current rules, the study indicates that the effects would be much smaller. The study found that about four percent of the step five denial decisions studied would change to an allowance. This is not equivalent to a four percent decrease in step five denials overall, because the sub-sample of step five denials in this study was stratified to include only the select group of step five denials that would potentially be affected by the proposed change in the relevant work period.

Using the case study results, OCACT estimates that on average over the next 10 years, the proposed rule will increase the number of disability awards per year by about 21,000 for OASDI and 10,000 for SSI. Of these changes, for OASDI, OCACT estimates roughly:

- 13,500 new allowances for individuals who would be denied at step four under current rules but under the proposed rules would be determined eligible under the vocational rules at step five;
- 7,500 new allowances for individuals who would be denied at step five under current rules because of transferrable skills from PRW who are determined eligible due to no longer being assessed to have transferable skills; and
- Less than 50 new allowances who would now be eligible under the "no work" profile.

For SSI, OCACT estimates roughly:

- 7,100 new allowances would be denied at step four under current rules but would be determined eligible under the vocational rules at step five;
- 2,500 new allowances for individuals who would be denied at step five under current rules because of transferrable skills from PRW who would be determined eligible due to no longer being assessed to have transferrable skills; and
- 400 new allowances under the “no work” profile.

Combining the impacts to OASDI and SSI, approximately two-thirds of the increase in awards is due to new allowances under the vocational rules at step five, 30 percent is due to individuals who would be allowed due to no longer being assessed to have transferable skills, and two percent is due to individuals who would now be eligible under the “no work” profile.

Anticipated Net Administrative Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net administrative savings of \$1.05 billion for the 10-year period from FY 2024 to FY 2033. The administrative savings are primarily driven by time savings from evaluating work over a shorter period for initial claims, reconsideration requests, and hearings processed in our field offices, State disability determination services, and hearings offices. In addition, due to a shorter PRW period, we expect fewer disability re-applications, reconsiderations, and hearings requests over the 10-year period, leading to sizeable administrative savings. Savings are offset by administrative costs stemming from systems updates and training costs upon implementation, and post-eligibility actions for additional beneficiaries and non-disabled dependents thereafter.

Anticipated Time-Savings and Other Qualitative Benefits to the Public

The proposed change will reduce the obstacles that individuals with significant physical or mental impairments face in their efforts to obtain the crucial benefits our disability programs provide. Our experience indicates that individuals often find it difficult to gather and provide accurate information about their work histories, and that those difficulties tend to increase when they are asked to provide detailed information about work performed in the more distant past. Reducing individuals' need to gather and report information about work performed beyond the proposed 5-year relevant period will increase the likelihood we will have a complete and accurate work history report. We estimate at a minimum this will result in at least 938,735 hours of time savings in direct paperwork burden experienced by claimants as well as additional time-savings associated with the overall process of completing the relevant forms. As discussed in the *Paperwork Reduction Act* section below, we estimate the opportunity costs of this time-savings to be at least \$59,733,733 annually.

The proposed change may also prevent the denial of benefits in certain situations in which, under our current rules, an individual might be found "not disabled" because of relatively distant work experience.

Anticipated Costs to the Public

As discussed in the preamble, our process for determining if an individual is disabled includes evaluating whether or not the individual, given their RFC, can perform any of their past relevant work. If an individual can perform their past work, then we will determine they are not disabled. By limiting the review of past relevant work to the previous 5 years, there are likely, on the margins, individuals who held jobs longer than 5 years in the past who may still be able to perform those jobs today. Those individuals would be found not disabled under our current rules. Under the proposed rules, these

individuals may be allowed. A subset of these individuals who would have been denied under the current rules would have worked in the absence of benefits. This reduction in labor force participation imposes some social costs on the public.

Previous research has found that, among claimants on the margin, an additional 16 to 17 percent would have worked above SGA in the absence of benefits three years later.⁸⁷ Although this margin is different than the one that would be invoked by the proposed change in rules, it provides a useful reference point.. One study found that 35 percent of those denied at step four (and above age 50) worked above SGA in at least one of the five years after the decision.⁸⁸ Further, the study found that 17 percent of this group had any earnings in the second year after the decision.⁸⁹ Therefore, the evidence indicates that there will be some instances of newly-allowed beneficiaries who would have worked—some of them above SGA—if they had been denied on the basis of the ability to do past work. This is also consistent with OCACT’s preliminary estimate that the increase in the number of individuals who would be receiving disability benefits would reduce OASDI payroll tax revenue over the next 10 years by a total between \$200 million and \$300 million.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not

⁸⁷ Maestas, Nicole, Kathleen J. Mullen, and Alexander Strand. 2013. "Does Disability Insurance Receipt Discourage Work? Using Examiner Assignment to Estimate Causal Effects of SSDI Receipt." *American Economic Review*, 103 (5): 1797-1829.

French, Eric, and Jae Song. 2014. "The Effect of Disability Insurance Receipt on Labor Supply." *American Economic Journal: Economic Policy* 6(2): 291–337

⁸⁸ Hyde, Jody Schimmel, April Yanyuan Wu and Lakhpreet Gill, 2018, The Benefit Receipt Patterns and Labor Market Experiences of Older Workers Who Were Denied SSDI on the Basis of Work Capacity, DRC Working Paper Number 2018 – 01. Available at <https://www.mathematica.org/publications/the-benefit-receipt-patterns-and-labor-market-experiences-of-older-workers-who-were-denied-ssdi>. See page 24. Small sample sizes in the Health and Retirement Study preclude giving estimates for individual years.

⁸⁹ Ibid, see Table C1.

have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State government functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

SSA already has existing OMB PRA-approved information collection tools relating to this proposed rule: Claimant's Work Background (HA-4633, OMB No. 0960-0300); Work History Report SSA-3368, OMB No. 0960-0578); and Disability Report - Adult (SSA-3368, OMB No. 0960-0579). The proposed rule, once implemented in final, provides for a shorter work history requirement than we previously required; therefore, we expect the rule will significantly reduce public reporting burdens associated with these forms. The sections below report our current public reporting burdens for these existing OMB-approved forms, and project the anticipated burden reduction and new burden figures after implementation at the final rule stage. We will obtain OMB approval for the revisions to the collection instruments simultaneously with the publication of the final rule.

The following chart shows the time burden information associated with the proposed rule:

OMB #; Form #; CFR Citations	Number of Respondents	Frequency of Response	Current Average Burden Per Response (minutes)	Current Estimated Total Burden (hours)	Anticipated New Burden Per Response Under Regulation (minutes)	Anticipated Estimated Total Burden Under Regulation (hours)	Estimated Burden Savings
0960-0300 HA-4633 (Paper Form) 410.1560; 416.960	32,300	1	30	16,150	20	10,767	5,383
0960-0300 HA-4633 (ERE) 410.1560; 416.960	157,700	1	30	78,850	20	52,567	26,283
0960-0578 SSA-3369 (Paper Form) 410.1560 416.960	1,553,900	1	60	1,553,900	40	1,035,933	517,967
0960-0578 SSA-3369 (EDCS Screens) 410.1560 416.960	38,049	1	60	38,049	40	25,366	12,683
0960-0579 SSA-3368 (Paper Form) 410.1560 416.960	6,045	1	90	9,068	80	8,060	1,008
0960-0579 SSA-3368 (EDCS Screens) 410.1560 416.960	1,263,104	1	90	1,894,656	80	1,684,139	210,517

0960-0579 i3368 (Internet Screens) 410.1560 416.960	989,361	1	90	1,484,042	80	1,319,148	164,894
Totals	4,040,459			5,074,715		4,135,980	938,735

The following chart shows the theoretical cost burdens associated with the proposed rule:

OMB #; Form #; CFR Citations	Number of Respondents	Anticipated Estimated Total Burden Under Regulation from Chart Above (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Average Wait Time in Field Office or Teleservice Centers (minutes)**	Total Annual Opportunity Cost (dollars)***
0960-0300 HA-4633 (Paper Form) 410.1560; 416.960	32,300	10,767	\$12.81*		\$137,925***
0960-0300 HA-4633 (ERE) 410.1560; 416.960	157,700	52,567	\$29.76*		\$1,564,394***
0960-0578 SSA-3369 (Paper Form) 410.1560 416.960	1,553,900	1,035,933	\$12.81*		\$13,270,302***
0960-0578 SSA-3369 (EDCS Screens) 410.1560 416.960	38,049	25,366	\$12.81*	21**	\$495,529***
0960-0579 SSA-3368 (Paper Form) 410.1560 416.960	6,045	8,060	\$12.81*	21**	\$130,355***
0960-0579 SSA-3368	1,263,104	1,684,139	\$12.81*	21**	\$27,236,942***

(EDCS Screens) 410.1560 416.960					
0960-0579 i3368 (Internet Screens) 410.1560 416.960	989,361	1,319,148	\$12.81*		\$16,898,286***
Totals	4,040,459	4,135,980			\$59,733,733***

* We based this figure on the average SSDI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2023 wait times for field offices and hearings office, as well as by averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

SSA submitted a single new Information Collection Request which encompasses the revisions to all three information collections (currently under OMB Numbers 0960-0300, 0960-0578, and 0960-0579) to OMB for the approval of the changes due to the proposed rule. After approval at the final rule stage, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information

technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA

Attn: Reports Clearance Director

Mail Stop 3253 Altmeyer

6401 Security Blvd

Baltimore MD 21235

Fax: 410-966-2830

Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 60 days after publication. To receive a copy of the

OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the *Federal Register*.

Faye I. Lipsky,
*Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.*

For the reasons set out in the preamble, we propose to amend 20 CFR part 404, subpart P, and part 416, subpart I, as set out below:

**PART 404--FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950-)**

Subpart P –Determining Disability and Blindness

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)-(b) and (d)-(h), 216(i), 221(a) and (h)-(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)-(b) and (d)-(h), 416(i), 421(a) and (h)-(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.1560 by revising paragraph (b)(1) to read as follows:

§ 404.1560 When we will consider your vocational background.

* * * * *

(b) * * *

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past five years that was substantial gainful activity and that lasted long enough for you to learn to do it. (See § 404.1565(a)).

* * * * *

3. Revise § 404.1565 to read as follows:

§ 404.1565 Your work experience as a vocational factor.

(a) *General.* *Work experience* means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last five years, lasted long enough for you to learn to do it, and was substantial gainful

activity. We do not usually consider that work you did more than five years before the time we are deciding whether you are disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after five years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. If you have no work experience or worked only “off-and-on” or for brief periods of time during the five-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last five years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the workday, as well as any other physical or mental duties of your job. If all of your work in the past five years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

PART 416-SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND,

AND DISABLED

Subpart I—Determining Disability and Blindness

4. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

5. Amend § 416.960 by revising paragraph (b)(1) to read as follows:

§ 416.960 When we will consider your vocational background.

* * * * *

(b) * * *

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past five years that was substantial gainful activity and that lasted long enough for you to learn to do it. (See § 416.965(a)).

* * * * *

6. Revise § 416.965 to read as follows:

§ 416.965 Your work experience as a vocational factor.

(a) *General.* *Work experience* means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last five years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did more than five years before the time we are deciding whether you are disabled applies. A gradual change occurs in most jobs so that after five years it is no longer realistic to expect that skills and abilities

acquired in a job done then continue to apply. The five-year guide is intended to ensure that remote work experience is not currently applied. If you have no work experience or worked only “off-and-on” or for brief periods of time during the five-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last five years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the workday, as well as any other physical or mental duties of your job. If all of your work in the past five years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.